

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1956

Introduced by Assembly Member Charles Calderon

February 13, 2008

An act to add Section 7061 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1956, as amended, Charles Calderon. State Board of Equalization: sales and use taxes: tangible personal property: digital property report.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The State Board of Equalization is authorized to enforce that law, as provided.

This bill would require the State Board of Equalization, within 60 days of the effective date of this act, to submit a report to the Legislature on transactions involving digital property within this state, that includes, but is not limited to, a proposed regulation that would provide that ~~tangible personal property~~, *sales of digital property are subject to tax* for purposes of the Sales and Use Tax Law, ~~includes digital property~~ *Law* and the ~~economic~~ *revenue* impact of that regulation. This bill also makes findings and declarations regarding the taxation of electronic transmissions of information.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) The Sales and Use Tax Law, administered by the State Board
4 of Equalization, imposes a tax on the gross receipts from the sale
5 in this state of, or the storage, use, or other consumption in this
6 state of, tangible personal property.

7 (b) The State Board of Equalization is authorized to prescribe,
8 adopt, and enforce rules and regulations relating to the
9 administration and enforcement of the Sales and Use Tax Law.
10 These regulations are issued by the State Board of Equalization to
11 implement, interpret, or make specific provisions of the Sales and
12 Use Tax Law and to aid in the administration and enforcement of
13 that law.

14 (c) Under the existing regulations, policies, and practices of the
15 State Board of Equalization the electronic transmission of
16 information that does not involve the transfer of tangible personal
17 property is not taxable under the Sales and Use Tax Law.

18 (d) Currently, therefore, if a subscriber receives a monthly report
19 via the Internet and the only hard copy of that report is generated
20 by the subscriber using his or her own computer, the company's
21 charge for the subscription to the report is not subject to tax.

22 (e) The increased use and sophistication of the Internet and
23 electronic equipment like personal computers, cellular telephones,
24 and devices that store, organize, and play audio and visual files
25 has, in turn, increased the amount of transactions in this state
26 involving the electronic transmission of information and "digital
27 property" that is received by a consumer through remote
28 telecommunications from a seller.

29 (f) "Digital property" ~~includes~~ *includes, but is not limited to,*
30 products like music, movies, and books, which, if delivered in a
31 tangible storage media, would be subject to sales and use tax in
32 this state under the Sales and Use Tax Law, and, as such, is the
33 ~~digital equivalent of tangible personal property.~~ *Tax Law.*

34 (g) Given these developments in the types of transactions
35 between consumers and sellers, it is imperative that California's
36 sales and use taxes reflect those developments.

37 SEC. 2. Section 7061 is added to the Revenue and Taxation
38 Code, to read:

1 7061. On or before 60 days after the effective date of the act
2 adding this—~~Section~~ *section*, the board shall submit to the
3 Legislature a report on transactions involving digital property
4 within this state that includes, but is not limited to, the following:

5 (a) A draft of a proposed regulation that would provide that
6 ~~tangible personal property~~, *sales of digital property are subject to*
7 *tax* for purposes of the Sales and Use Tax Law (Part 1
8 (commencing with Section 6001) of Division 2), ~~includes digital~~
9 ~~property~~. 2).

10 (b) The ~~economic~~ *revenue* impact of the proposed regulation.

11 (c) Changes required to ~~ensure compliance with~~ *administer* the
12 proposed regulation.

13 (d) *The board may adopt regulations to implement this section.*
14 *The adoption, amendment, or repeal of a regulation authorized*
15 *by this section is hereby exempted from the rulemaking provisions*
16 *of the Administrative Procedure Act (Chapter 3.5 (commencing*
17 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*
18 *Government Code).*